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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**DECLARATION OF MARK C. MAO IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO MOTION TO INTERVENE AND TO
CONTINUE THE FINAL APPROVAL
HEARING (DKT. 1116)**

Judge: Hon. Yvonne Gonzalez Rogers

Date: August 7, 2024

Time: 2:30 p.m.

Location: Courtroom 1 – 4th Floor

1 I, Mark C. Mao, declare:

2 1. I am a partner with the law firm of Boies Schiller Flexner (“BSF”), which together
3 with Morgan & Morgan and Susman Godfrey (collectively “Plaintiffs’ Counsel”) are counsel for
4 Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State
5 of California. I have personal knowledge of the matters set forth herein and am competent to testify.

6 2. I submit this declaration in support of Plaintiffs’ Opposition to Motion to Intervene
7 and to Continue the Final Approval Hearing (the “Opposition”), filed in response to Movant’s Notice
8 of Motion and Motion to Intervene and to Continue the Final Approval Hearing (the “Motion”) (Dkt.
9 1116).

10 3. Plaintiffs filed their motion for final approval of the Settlement on April 1, 2024, and
11 Google’s counsel represented that CAFA notices were issued within 10 days after the filing of that
12 motion. Plaintiffs’ Counsel have not received any objections to the Settlement in response to the
13 CAFA notices or from any class members.

14 4. The Moving Parties expressed no concerns about Plaintiffs’ Counsel’s representation
15 nor did they move to intervene when the Court denied 23(b)(3) certification in December 2022, when
16 the Ninth Circuit rejected the 23(f) petition in March 2023, or once the Court declined to confirm
17 damages claims were tolled in May 2023. The Moving Parties expressed no concerns about Plaintiffs’
18 Counsel’s representation until moving to intervene months after the Settlement approval motion was
19 filed and on the eve of the final approval hearing.

20 5. The parties involved in this lawsuit have been engaged in hard-fought litigation for
21 over four years, and worked under the supervision of Judge Phillips for more than four months to
22 mediate and negotiate an arms-length compromise that provides substantial injunctive relief to the
23 23(b)(2) class certified by this Court.

24 6. Attached hereto as Exhibit 1 is a true and correct copy of (1) the Tolling Agreement
25 entered into as of November 13, 2023, between Google and certain clients represented by BSF; (2)
26 an addendum to the Tolling Agreement dated November 26, 2023; and (3) a second addendum to the
27 tolling agreement dated January 23, 2024.

8. Attached hereto as Exhibit 2 is a true and correct copy of a complaint filed by Potter Handy LLP on April 23, 2024, in California state court on behalf of all of the Moving Parties.

9. Attached hereto as Exhibit 3 is a true and correct copy of an email thread beginning on June 10, 2024, where Potter Handy LLP emails BSF requesting a copy of the Tolling Agreement, and continuing to June 11, 2024, where BSF informed Potter Handy LLP that it had no objection to Google providing a copy of the Tolling Agreement.

10. Attached hereto as Exhibit 4 is a true and correct copy of a March 2, 2023, public news article from Reuters titled “Google ‘Incognito’ users lose appeal to sue for damages as class” which details the Court’s decision to not certify a 23(b)(3) class and the Ninth Circuit’s denial of Plaintiffs’ 23(f) petition.

11. Attached hereto as Exhibit 5 is a true and correct copy of a March 2, 2023, public news article from Tech Times titled “Google Chrome Incognito Privacy Lawsuit: Plaintiffs Lose Appeal to Pursue Money Damages” which details the Court’s decision to not certify a 23(b)(3) class and the Ninth Circuit’s denial of Plaintiffs’ 23(f) petition.

12. Attached hereto as Exhibit 6 is a true and correct copy of a December 14, 2022, public news article from Law Street titled “N.D. Cal. Court Denies Certification of Damages Class in Google Data Collection Class Action,” detailing the Court’s decision to not certify a 23(b)(3) class.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on July 16, 2024, at San Francisco, California.

/s/ Mark C. Mao

Mark C. Mao